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 13 KNICKERBOCKER PROPERTIES, INC. XXXVIII

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 15
 16 UNITED STATES DISTRICT COURT
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 18 NORTHERN DISTRICT OF CALIFORNIA

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 21 National Fair Housing Alliance, Inc.; Fair
 22 Housing of Marin, Inc.; Fair Housing Napa
 23 Valley, Inc.; Metro Fair Housing Services, Inc.;
 24 and Fair Housing Continuum, Inc.,

25 Plaintiffs,

26 v.

27 A.G. Spanos Corporation, Inc.; A.G. Spanos
 28 Development, Inc.; A.G. Spanos Land
 29 Company, Inc.; A.G. Spanos Management, Inc.;
 30 The Spanos Corporation; and

31 Knickerbocker Properties, Inc. XXXVIII; and
 32 Highpointe Village, L.P., Individually and as
 33 Representatives of a Class of All Others
 34 Similarly Situated,

35 Defendants.

36 Case No. C07-03255-SBA

37
 38 [PROPOSED ALTERNATIVE] ORDER
 39 GRANTING STAY OF ACTION AS TO
 40 DEFENDANT KNICKERBOCKER
 41 PROPERTIES, INC. XXXVIII

42 Date: March 11, 2008

43 Time: 1:00 p.m.

44 Ctrm: 3

45 Amended Complaint Filed: October 12, 2007

1 The motion of defendant Knickerbocker Properties, Inc. XXXVIII ("Knickerbocker") for
2 an order dismissing Plaintiffs National Fair Housing Alliance, Inc., Fair Housing of Marin, Inc.,
3 Fair Housing Napa Valley, Inc., Metro Fair Housing Services, Inc., and Fair Housing Continuum,
4 Inc. (collectively "Plaintiffs") claims against Knickerbocker came on regularly for hearing on
5 March 11, 2008, at 1:00 p.m. in Courtroom 3 of the above-entitled court, located at 1301 Clay
6 Street, 3rd Floor, Oakland, California, before the Honorable Saundra Brown Armstrong. Stephen
7 Walters appeared on behalf of Defendant Knickerbocker, and Michael Allen appeared on behalf of
8 Plaintiffs.

I. BACKGROUND

10 Plaintiffs' Amended Complaint, filed on October 12, 2007, alleges that 81 apartment
11 complexes built by defendants A.G. Spanos Construction, Inc., A.G. Spanos Development, Inc.,
12 A.G. Spanos Land Company, Inc., A.G. Spanos Management, Inc., and The Spanos Corporation
13 (collectively "A.G. Spanos") and located in various states fail to comply with the Fair Housing Act
14 (42 U.S.C. § 3601 *et seq.*)("FHA"). Plaintiffs allege that 34 Spanos-built apartment complexes
15 located in various states have been tested and fail to meet the accessibility requirements of the
16 FHA. They also allege that 47 untested Spanos-built apartment complexes located in various
17 states fail to meet the accessibility requirements of the FHA. Plaintiffs seek to enjoin A.G. Spanos
18 from, among other things, failing or refusing to retrofit the apartment complexes. Plaintiffs seek
19 to enjoin Knickerbocker, a current owner of two apartment complexes, from failing or refusing to
20 permit A.G. Spanos to perform the retrofits.

21 Knickerbocker filed its motion to dismiss Plaintiffs' Amended Complaint on December 12,
22 2007. Plaintiffs filed their Opposition on February 19, 2008. Knickerbocker filed its Reply on
23 February 26, 2008.

II. **LEGAL STANDARD**

25 The court may dismiss a claim where "there is no cognizable legal theory or an absence of
26 sufficient facts alleged to support a cognizable legal theory." *Navarro v. Block*, 250 F.3d 729, 732
27 (9th Cir. 2001). The court is not required to accept as true allegations that are merely conclusory,

1 unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden State Warriors*,
 2 266 F.3d 979, 988 (9th Cir. 2001).

3 A complaint is subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil
 4 Procedure when an affirmative defense, like the statute of limitations, appears on its face. *ALA,*
 5 *Inc. v. CCAIR, Inc.* (3rd Cir. 1994) 29 F.3d 855, 859. Such a complaint fails to state a claim
 6 because the action is time-barred. *Jablon v. Dean Witter & Co.* (9th Cir. 1980) 614 F.2d 677, 682.

7 **III. ANALYSIS**

8 Under the FHA, an aggrieved person may bring a claim "not later than 2 years after the
 9 occurrence or the termination of an alleged discriminatory housing practice." 42 U.S.C.
 10 § 3613(a)(1)(A). After Knickerbocker filed its motion to dismiss, the Ninth Circuit Court of
 11 Appeals granted *en banc* rehearing of the panel decision in *Garcia v. Brockway*, 512 F.3d 1089
 12 (9th Cir. 2007) *granting rehearing of* 503 F.3d 1092 (9th Cir. 2007), which will authoritatively
 13 settle the law of this Circuit as to the application of the FHA's two-year limitations period to
 14 construction and design cases.

15 **IV. CONCLUSION**

16 Having read and considered the documents submitted in support of and in opposition to
 17 Knickerbocker's motion, and the arguments of counsel, and good cause appearing therefore,

18 IT IS HEREBY ORDERED that Plaintiffs' action is stayed as to Knickerbocker pending
 19 the Ninth Circuit's *en banc* decision in *Garcia v. Brockway*, 512 F.3d 1089 (9th Cir. 2007) *granting*
 20 *rehearing of* 503 F.3d 1092 (9th Cir. 2007).

21
 22 Dated: _____, 2008

23 _____
 24 Honorable Saundra Brown Armstrong
 25 United States District Judge
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